



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of	)	<b>Mail Stop:</b>
Anne Farbrot et al.	)	<b>APPEAL BRIEF - PATENTS</b>
Application No.: 10/800,176	)	Group Art Unit: 3761
Filed: March 12, 2004	)	Examiner: MICHAEL G. BOGART
For: CARRIER FOR ADDITIVE IN AN	)	Confirmation No.: 8607
ABSORBENT ARTICLE	)	

**REPLY BRIEF**

**Mail Stop APPEAL BRIEF - PATENTS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer mailed 11 October 11 2007, and the Supplement to the Examiner's Answer, Applicants submit the following Reply Brief.

**Remarks**

In the Examiner's Answer mailed October 11, 2007, the Examiner asserts, Roe teaches an absorbent article that in at least one embodiment, has a lotion having additive materials, such as perfumes, antibacterial actives, deodorants, etc. that can be transferred to the skin of a wearer (col. 18, lines 30-40). Substituting Roe's emollient with the elastomeric silicone of Lin does not change this functionality, even if other functions of Roe are changed. The elastomeric silicone of Lin would still allow these materials to be transferred to the wearer's skin.

(Examiner's Answer, Page 7).

Applicants point out that Roe "relates to absorbent articles having a lotion coating on the outer surface of the topsheet that is transferable to the wearer's skin by normal contact and wearer motion and/or body heat." (Column 1, Lines 9-12). As previously noted, Roe is clear that the "emollient is a material that softens, soothes, supples, coats, lubricates, moisturizes or cleanses the skin." (Column 10, Lines 34-36). Further, the lotion coating, and the emollient in particular, must be transferable to the wearer's skin. (Column 2, Lines 46-50). The emollient "allows the lotion composition to impart a soft, lubricious, lotion-like feel." (Column 10, Lines 41-42).

It is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983); MPEP § 2145.X.D.2. Applicants respectfully assert that the Examiner's proposed combination of Roe and Lin is improper, as substituting the emollient of Roe with the elastomeric silicone of Lin would, by the Examiner's own admission, prevent transfer of emollient to the wearer's skin while allowing other materials to be transferred (" . . . even if other functions of Roe are changed."). In particular, Roe discloses, "Importantly, the lotion compositions of the present invention are easily transferable to the skin by way of normal contact, wearer motion, and/or body heat." (Column 3, Lines 45-47).

The Examiner further asserts, "Lin teaches an oil which can perform the soothing, moisturizing and lubricated function of the emollients of Roe." (Examiner's Answer, Page 7). Lin discloses elastomeric silicones prepared by combining and reacting (A) an  $\equiv\text{Si}-\text{H}$  containing polysiloxane, (B) a mono-alkenyl polyether, (C) an active ingredient such as a vitamin, antimicrobial agent, sunburn prevention agent, astringent, or sex hormone, (D) an  $\alpha,\omega$ -unsaturated hydrocarbon, (E) a platinum


catalyst, and (F) an oil. (Abstract).

Lin specifically discloses that "the term 'oil' is not considered synonymous with the phrase active ingredient, and the phrase active ingredient is not considered synonymous with the term 'oil', within the context of the invention." (Column 7, Lines 14-17; see also Column 2, Lines 17-20). Lin discloses that the oil is "used to dissolve, suspend, or change the physical properties of other materials." (Column 6, Lines 24-25). Thus, contrary the assertion of the Examiner, the oil of Lin does not perform the soothing, moisturizing, or lubricating function of the emollient of Roe.

Applicants respectfully submit that the proposed combination of Roe and Lin does not teach or suggest the present claims. Accordingly, claim 1-18 should be indicated to be allowable.

Respectfully submitted,  
Buchanan Ingersoll & Rooney PC

Date December 5, 2007

By:   
Travis D. Boone  
Registration No. 52,635

P.O. Box 1404  
Alexandria, Virginia 22313-1404  
(703) 836-6620